

Quid Novi

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MCGILL UNIVERSITY FACULTY OF LAW

OCTOBER 15, 1981

Quebec to Abolish Bar School?

BY MAREK NITOSLAWSKI

A meeting of the Confédération des Associations d'étudiants en droit (CADED) was held Friday, October 2, at the Université de Montréal. CADED is composed of three representatives from each LUS from the six faculties of law in Québec. It serves the function of a forum for the expression and solution of problems common to all law students in the province. The idea of CADED as being an organization concerned with global issues, as opposed to issues of concern to individual institutions, was unanimously reiterated at the October 2 meeting. It is hoped that this way CADED will spend less time on whether or not to support a strike at U of M or UQAM and a lot more time on issues of a truly important nature.

As this was the first meeting of the year, and since many of the representatives in attendance were new to CADED, most of the four-hour meeting was spent determining which issues would be given priority for consideration in the upcoming year.

It was recognized by all present that foremost priority should be given to the examination of proposals put forth last year by the Office des professions, on conditions for the exercise of professions in Québec. These little-known proposals have already caused a furore in the small circles in which they were distributed. A summary of these recommendations can be found in a booklet from the Office des professions du Québec entitled Les CONDITIONS SUPPLEMENTAIRES au diplôme ou à la formation de base et les COMITES DE LA FORMATION (documentation is available at LUS for consultation).

The Office des professions is putting into question the whole idea of so-called

"conditions supplémentaires à la formation de base pour l'exercice d'une profession"; that is, additional conditions imposed by a given professional corporation on students after successful completion of university or collegiate studies: "cours de formation professionnelle" (bar school), examinations (bar exams), and stages (articling).

The recommendations put forth by the Office could profoundly alter the present system of admittance to the legal profession. The Bar is one of six professional corporations in Québec that require the

(Continued page 2)

COMMENT

What the Supreme Court Said

It is worth drawing attention to the fact that the decision of the Supreme Court of Canada concerning the effect and validity of Mr. Trudeau's proposed resolution contained unanimous agreement of the judges on one principle: convention of itself would not be enforced as law. There was no great debate on that. What was much more at issue was the existence of statutory provisions limiting the power of the Federal Parliament to propose amendment of the Constitution. The dissent of Martland and Ritchie turned on a reading of s. 7 of the Statute of Westminster:

Section 7 of the Statute was intended to safeguard legislative powers from possible encroachment by the Federal Parliament as a result of the powers being conferred upon the Parliament of Canada by the Statute.

The Statute recognized Canada's status as a sovereign state and it protected

(Continued page 3)

(Continued from page 1)

three classes of "conditions supplémentaires": school, exams, stages. The Office recommends that jurisdiction over these additional qualifications revert back to where the traditional responsibility for education lies, in the universities.

Some of the reactions to the report from the legal milieu were rather strong: the Comité conjoint de la formation juridique des avocats denounced "la suppression de la 4^e année de formation professionnelle." At three universities, Ottawa, Sherbrooke and Laval, the students met in assemblies last year and overwhelmingly rejected the proposals. And recently, one McGill professor was quick to comment: "This is the end of an independent profession."

However, some of the initial fears might have been overstated. For one, the report of the Office does not recommend the abolition of the fourth year, but only its repatriation to the universities, which would entail the abolition of repetition of materials presently being covered in university and later in bar school. Secondly, it is not clear that the vote of the students last year was informed; at the CADED meeting of Oct. 2, the various members of the executives from those very three schools had hardly heard about, let alone know of its contents.

What is being proposed by the Office is, in effect, a global reform of the requirements for acceding to the legal profession. But many questions still need answering before any reforms of such magnitude are to proceed "sans heurte" as the Office so much desires. Such as: will the universities end up at the short end of the financial stick, picking up the extra cost of a fourth year? Is it good policy to concentrate all professional education in one institution? Is this really the end of an independent profession?

One thing remains certain: this issue is very much an immediate problem. The report is on the minister's desk, and there is talk of legislation by next fall. If the concerns of law students are not voiced so as to provoke a serious, full-scale debate on the matter, the reforms may be pushed ahead with consequences that cannot, as of yet, be predicted. ■

MOOT COURT BOARD

JESSUP INTERNATIONAL LAW MOOT

The Jessup International Law Moot problem has arrived. This annual competition engages students in written and oral advocacy on complex questions of international law and policy. This year, the competition will take place in the spring in Windsor, Ontario. Those people interested in participating on the 1982 team for the school are referred to further information on the Moot Court Notice Board in the basement.

RE: TRIBUNAL-ECOLE INTERFACULTAIRE

Le tribunal-école interfacultaire est une compétition impliquant les facultés de droit des universités du Québec ainsi que la faculté de droit civil de l'Université d'Ottawa. Chaque université participante doit présenter une équipe composée de deux étudiants y poursuivant des études en droit. Les participants prendront connaissance du sujet du problème le 12 janvier 1981 et auront jusqu'au 12 février 1981 pour rédiger leurs mémoires. La compétition comporte une semi-finale et une finale qui se dérouleront le 12 et 13 mars 1981 à l'Université d'Ottawa.

Les étudiants de l'Université McGill inscrits en droit civil ou en common law sont admissibles. Cependant, une certaine connaissance du droit civil est recommandée. De plus, il est possible de rédiger le mémoire et de plaider en anglais ou en français.

Une session d'information aura lieu le mardi 20 octobre 1981 à 1h00 dans la salle 204.

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Opinions expressed are those of the author only.

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ON THE NATURE OF THE LAW

Justice wizened rustedly
beneath its iron latch
'till rung with the
blood of Mercy.

The Dialectic then?
Physogenetics ♂

Gently entwined with the
golden strand
of
infinity
∞

ANONYMOUS BCLIII

(Continued from page 1)

Canada's federal structure. Consequently:
The Resolution at issue in these
appeals would only be an effective
expression of Canadian sovereignty if
it had the support of both levels of
government.

Their focus was on the lack of statutory
support for what the Federal government
intends to do rather than on statutory
preclusion of it. The majority agreed
that:

The plain fact is that s.7(1) was
enacted to obviate any inference of
direct unilateral federal power to
amend the B.N.A. Act.

But nothing in s.7(1) brings about "a le-
gal diminution of United Kingdom legisla-
tive sovereignty." Whereas the dissent
attempted to stake out a ground for
deciding on Canadian sovereignty in
Canada, for the majority, the bottom line
was that sovereignty over amending the
B.N.A. Act remains in Britain. Canadian
legislative activity in Parliament and
Joint Committee is irrelevant. The
Statute of Westminster turns amendment of
the B.N.A. Act into a legal nullity in
Canada. All we can say is that there is a
convention stipulating that Westminster
will act on a proposed resolution from the
Parliament of Canada. Whether or not
Westminster will be satisfied that the
resolution meets the terms under which it
can act as a "fiduciary" agent remains for
Westminster to determine.

While this may be the legal essence
of the answer to question 3, it seems
clear that the political essence of the
answer was to push the parties into

adherence to Canadian convention despite
the inability of the Court to enforce the
convention. Here it is revealing to exa-
mine the three-way split of the Court.
One "majority" of the Court-- namely
Laskin, Estey, McIntyre, Martland and
Ritchie,-- wanted the question of the
effect of the convention decided one way
or another. Either there was no
convention to enforce or there was a
convention with statutory grounds of
enforcement. In other words, they wanted
a clear statement to the country. The
four judges who went "both ways", Beetz,
Chouinard, Lamer and Dickson, did not want
that clarity. It is significant that all
the Quebec judges are in that group.
Despite the presumption that judges are
separate from politics, there was
obviously a political gamble involved in
such a decision. Perhaps the federal
government is now forced to pause and
consider the weight of convention-- not
only here but in Westminster. Perhaps the
provinces are now forced to pause and
recognise that law will not restrict the
federal initiative. Perhaps both sides
will budge-- the federal government
dropping referendum provisions and
salvaging language rights while the
provinces drop opting out and commit
themselves to perhaps putting a general
Bill of Rights to the people or nego-
tiating legislative override provisions.
But the test of this decision will be if
it does get the parties to budge. If it
does not, René Lévesque's claim that the
decision has given the PQ a stronger
weapon than ever before with which to
attack the federal government may come
back to the haunt the Supreme Court and
all of us.

RICHARD JANDA LLB I

LUS COUNCIL

NOTICE

LUS Council Meeting Wednesday, Oct. 14
6:00 pm, Room 202

TOPICS

1. Exam Scheduling Committee
2. Faculty Council Committee reports
3. LUS Structural Revision
4. CADED Report
6. Sports update
7. Job Bank
8. Exam Survey Committee

COMMENT

The Collective Memory

I would like to take up a theme brought out by Campbell Stuart in his "Word" that appeared in the first issue of Quid Novi. The theme is that of our collective memory.

Our memory span, as a student body, is lamentably short. For instance: course evaluations, along with their publication, were finally acquired as alright by last year's LUS through much blood and sweat; this year we are considering drastic changes to this program without, it would seem, first trying to resolve its problems. Another example is the exam schedule. For two years we've had a system that seemed to cause minimal dissatisfaction; this year, the student body is spending much time and energy looking for alternatives. And what of last year's outcry for greater student representation in faculty government, and the ensuing Day of Silence protest? Student representation in this faculty remains among the lowest on the continent.

It is not the pros and cons of the above individual issues that I am concerned with here. The point is that one could continue with such examples of the issues that have, now and again, caught the fancy of the student body, only to be promptly forgotten by the same students.

An improved collective memory is essential so that questions we are faced with this year and in subsequent years may be debated intelligently and with full awareness of their consequences. Some will say that we are here to learn the law, to learn of trusts, tax and obligations. But it could be answered that we are here for an education, in the full sense of the word and with all its implications.

A better memory... with a greater exchange of ideas, an open attitude to new solutions. For it is only through communication that memories are refreshed. The tools for more efficient communication are at our disposal; let's use them. We have Quid Novi (new, revised edition). It has grown from last year's newsletter to a genuine forum for the exchange of ideas and viewpoints. But there is more. On the express demand of students, a slot was set aside in the timetable for student

activities. Are we going to forget this one also? Whether it be talk on Poland, or another topical discussion by some other speaker, or a general assembly, this time period is set aside for us to share, learn, and interact. It could even be habit-forming to munch your lunch in the Moot Court on Thursdays. Maybe you'll meet the first-year student who stumped Prof. Scott, or the upper year student who thinks the LUS sucks.

It is only by using these means at our disposal that we'll solve our collective problems and preserve our credibility as a responsible student body.

MAREK NITOSLAWSKI BCLIII

STUDENT DISCUSSION: SHOULD THE TRUDEAU PACKAGE GO AHEAD?

In response to the concern that a school with a National Program should have a forum for the discussion of national issues, a number of students have proposed the formation of a group to hold student discussion sessions and invite guest speakers. Provisionally called "Forum National", the group would focus on Quebec's place in Canada, the direction of national policies, and, indeed, on what the word "nation" means culturally and politically. The first event will be a discussion initiated by three students, who will take the Quebec, Federal, and Provincial views respectively of Trudeau's constitutional package. The meeting will also incorporate the group. Sessions will be conducted in French and English. Time: 1.00 Monday October 19. Place: Moot Court.

BOARD OF STUDENT ADVISORS

MEMO

To: Colleagues

From: Board of Student Advisors

Re: Courthouse Tours for First-Year Students

If you have had some courtrun experience or are otherwise familiar with the Palais de Justice and would be interested in giving a tour to a small group of first-year colleagues sometime later this month, please leave your name, telephone number and schedule of available hours at SAO. Your participation in this project would be greatly appreciated.